APPENDIX

FILED
JUN 27 1974
MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1162

UNITED STATES OF AMERICA,

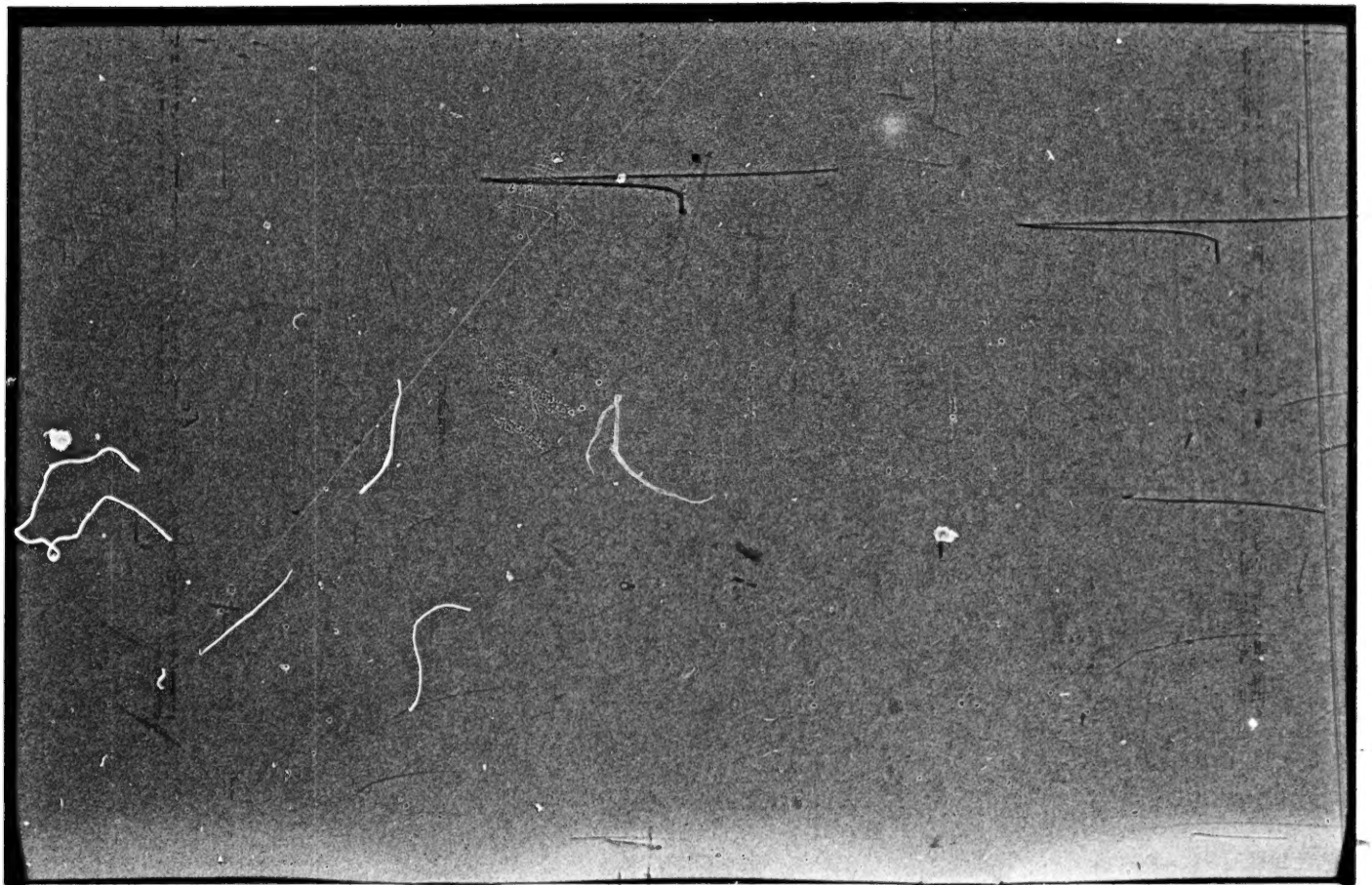
Petitioner

—v.—

THOMAS JOSEPH WILSON and BOBBY ANTONIO BRYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED
JANUARY 28, 1974
CERTIORARI GRANTED MAY 13, 1974



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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
2- 7-73	Filed Indictment
2- 9-73	Pleadings adj. to 2-13-73 at 10:30 AM as to both defts.
	Both defts. continued remanded in lieu of bail fixed by Magistrate:
	Anderson $20,000. cash or surety—Wilson $50,000. cash or surety.—Tyler, J.
2-13-73	T.J. Wilson—Deft. (Atty. present) pleads not guilty. Bail fixed at $25,000.
	P.R.B. secured by 10% cash. Remanded in lieu of bail.
	Case assigned to Judge Lasker.—Stewart, J.
3- 6-73	Deft. Wilson—psychiatric examination ordered. Lasker, J.
3- 7-73	Wilson—Filed Order to employ the services of Dr. George Hamilton Wilke, to examine deft. to determine his mental competency.
3-21-73	Deft. Wilson (atty. present) withdraws his plea of not guilty and pleads guilty to counts 5 and 6. Pre-sentence investigation ordered. Sentence adjourned to May 4, 1973. Lasker, J.
3-29-73	Trial begun, Jury impanelled before Lasker, J. (DEFT ANDERSON)
3-30-73	Trial Cont'd.
4- 2-73	Trial cont'd
4- 2-73	Bobby Antonio Bryan being called as a witness is granted immunity by the Court and paid [sic] witness refusing to testify after being directed by the Court to do so is held in contempt of Court and sentenced to a term of imprisonment for a

DATE	PROCEEDINGS
4- 2-73	period of 6 months pur. to Ti. 18 U.S.C. Sec. 402, to be served consecutively to the term of imprisonment imposed in 72 Cr 1190. Stayed pending appeal.
	Thomas Joseph Wilson being called as a witness is granted immunity by the Court and said witness refusing to testify after being directed by the Court to do so is held in contempt of Court and sentenced to 6 months imprisonment purs. to Ti. 18 U.S.C. Sec. 402, to be served consecutively to any term of imprisonment which shall be imposed in this case as a result of deft having pleaded guilty herein-Execution of sentence stayed pending appeal. Lasker, J.
4- 3-73	Trial cont'd-jury unable to reach a verdict, Mistrial declared Jury discharged. Lasker, J.
4- 6-73	Bobby Antonio Bryan a witness—Filed notice of appeal to the USCA for the 2nd Circuit from Judgment dated 3-30-73—appl. to proceed in forma pauperis is granted—Lasker, J. (mailed copies to deft. and US Atty.)
4- 6-73	Thomas Joseph Wilson (as a witness)—Filed notice of appeal from judgment dated 3-30-73—appl. to proceed in forma pauperis is granted—Lasker, J. (mailed copies to deft. and US Atty's office)
4-20-73	*Filed Transcript of record of proceedings, dated* 3-30-73

A TRUE COPY
THOMAS E. ANDREWS
Acting Clerk

By /s/ [Illegible]
Deputy Clerk

EXCERPTS OF TRANSCRIPT OF MARCH 29 AND APRIL 2, 1973

[84]

* * * *

THE COURT: I received from Mr. Feinberg what he represents to be a teletype received from the United States Attorney's office, is that correct?

[85] MR. FEINBERG: That's correct.

THE COURT: The substance of which is the same except it applies to Mr. Wilson, the present witness, as was the substance of Court Exhibit 1, which related to Mr. Bryan. Was it Bryan?

MR. FEINBERG: Yes.

THE COURT: Namely, authorization to confer immunity from prosecution for such testimony as will be given in regard to this case or anything growing out of it.

I will have this exhibit made Court's Exhibit 4.

(Court's Exhibit 4 marked.)

MRS. HERMANN: Judge, before we proceed with this matter I understood that the Court was considering the possibility of imposing sentence on this case.

THE COURT: I may do that if I find that it is necessary, yes. Perhaps.

I haven't yet heard from the witness what his position is.

MR. FEINBERG: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FEINBERG:

Q Mr. Wilson, do you know the defendant Robert Joel Anderson?

A I refuse to answer on the grounds it might incriminate [86] me.

THE COURT: Do you intend, Mr. Wilson, to refuse to answer further questions put to you with regard to Mr. Anderson or the case in which he is charged with robbing the Empire National Bank on January 26, 1973?

THE WITNESS: Yes, sir.

THE COURT: All right. I think that I will have to adjourn the proceedings for a few minutes because one of the relevant legal considerations that has been raised in the past and which as might as well be eliminated from the record, is the question of whether the witness has or has not been sentenced on his plea of guilty. This witness has not been sentenced, but I have spoken to the probation officer, who has told me he is available to render a pre-sentence report, and I am prepared knowing what he has already told me, to impose sentence as soon as the probation officer in the presence of Mrs. Hermann and Mr. Wilson, gives his report.

After I have done that, we will proceed.

MRS. HERMANN: May I make two objections for the record before we proceed.

The first would be that Mr. Wilson is not lawfully before this Court, having never been served with a subpoena as required under the Federal rules of criminal procedure and had he been so served, I would have objected to the [87] validity of such service because I believe the position that he is now placed in before the Court so jeopardizes him in connection with his criminal case that due process for bids is even being subpoenaed, let alone confronted with the question of whether he will or will not testify in this case.

THE COURT: Very well.

MR. FEINBERG: Your Honor, I would say that the Government disagrees entirely with what Mrs. Hermann has represented here. He has not been served. However, for the record I note that Mr. Wilson is currently in custody, having plead guilty to this charge and is awaiting sentence this afternoon, and was brought over by the marshals.

THE COURT: I think that the question of not having been served could be cured by your applying, if you wish, for a writ of habeas corpus ad testificandum.

If you make such application, I would grant it.

With regard to the other questions that Mrs. Hermann raises, they will be part of whatever issue is appealed to

the Court of Appeals in case my ultimate ruling is adverse.

MRS. HERMANN: May I make a second very brief statement for the record. That is that Mr. Feinberg, the plea in this case was originally scheduled for yesterday, March 29.

THE COURT: Whose plea?

[88] MRS. HERMANN: The plea by Mr. Wilson. The resolution of Mr. Wilson's criminal charges was originally scheduled for March 29. At the request of Mr. Feinberg it was moved up so that the plea was, in fact, entered on March 21. I believe that that was done in order so that Mr. Feinberg would create the instant situation. I did not have notice of the developments in this case regarding the possibility of the testimony and immunity until the afternoon of March 28 and I feel that the matters concerning whether or not Mr. Wilson can be compelled to testify in this case are extremely complicated questions of law, which the time involved in this case has really prevented me from adequately researching.

I would therefore move for a continuance of this entire matter because we really have a person here faced with very serious criminal penalties should it result that he eventually is held in contempt of Court and that this should not be a matter which is so hastily determined.

MR. FEINBERG: Your Honor, if I may reply to this. As your Honor knows from Court Exhibits 1 and 4, the Government has moved with great haste in this matter having decided that immunity must be granted. We have not even filed the normal forms with Washington. We have gone over the teletype in an effort to get the immunity on—

THE COURT: That is precisely what Mrs. Hermann is [89] saying.

MR. FEINBERG: The point I wish to make is that this was not known on the 21st of March when Mrs. Hermann implies that I did this precisely for this reason. That is entirely and totally false.

THE COURT: It seems to me without going further into the matter that any defendant and any lawyer for

any defendant must at least be partially aware that if the defendant proposes to plead guilty he might be called as a witness against a co-defendant or in relation to the actions of this crime.

That is one of the results, once somebody has pleaded guilty. It is a normal result to a plea of guilty.

I see no reason to defer the matter here, Mrs. Hermann. I don't mean for a minute to minimize your sincerity in believing that these issues are complex and I indicated this morning that I think they are unsettled, I agree with you, but I don't think any harm is going to come to this defendant either in the final analysis. I think we cannot delay this trial. I cannot delay it. I have many other matters that are equally important to the people concerned in those cases which are following.

The chief reason why this case came to trial as quickly as it did was for the benefit of the defendants in [90] the sense that neither one of them had been able to furnish bail and they, therefore, had a prior right to go to trial. I am prepared to see to it that the trial is completed and terminated.

MR. KAHN: I just merely want to note my objection for the record in that the defendant Anderson views the sentencing—the unscheduled sentencing, should it occur, by your Honor of Mr. Wilson as premature in this matter. That is all I want to say for the record so that the record is clear and it is prejudicial to this defendant Anderson.

THE COURT: All right.

As soon as the probation officer arrives, will you please let me know, Mr. Clerk.

(Short recess.)

(In open court without the presence of the jury.)

MRS. HERMANN: Your Honor, while we are waiting for the probation officer, may I say—

THE COURT: He is here.

Is there something you want to add to the previous discussion?

MRS. HERMANN: Yes, it is my understanding from the proceedings this morning that really Mr. Wilson's testimony would be cumulative in nature in this case and does not add any necessary element to the Government's case.

[91] THE COURT: I cannot agree with that, if he should testify that Mr. Anderson was present at the scene of the crime, that would be certainly different as a key defendant saying that than somebody else saying that.

I cannot agree with you.

MRS. HERMANN: I would also object to the premature sentence in Mr. Wilson's case on the grounds that it is taking place under the most coercive and prejudicial circumstances, where Mr. Wilson stands before you on sentence sitting in a witness box—

THE COURT: I think you are right. I think we should clear the courtroom and proceed in normal fashion.

If all of you except Mr. Feinberg and Mr. Linden, that is all who are participating in the proceedings will go to the back of the room, Mr. Anderson, I guess you will have to stay with a guard and Mr. Wilson will you and Mrs. Hermann please take the position at the normal defense table.

Be seated. Is there anything further? I recognize and there is no question about it that I am sentencing—about to sentence Mr. Wilson slightly earlier than had been planned and, on the other hand, I expect to proceed with the same general type of information that I would have had at the appropriate time.

I have asked Mr. Linden, the probation officer to be [92] present here and to report to me on such material as he has that is relevant to Mr. Wilson's defense.

Mr. Linden, would you tell me what you have to do that would be included in a presentence report on Mr. Wilson?

MR. LINDEN: Your Honor, we have spoken to Mr. Wilson. We haven't had a chance to verify the things he has told us.

According to the fingerprint, the FBI sheet that I have, he has been arrested a number of times. The first dated

February 17, 1971, which case was dismissed and that was a charge of resisting arrest and harrassment. That took place in New City, New York.

THE COURT: Are there any prior convictions?

MR. LINDEN: There is a prior conviction based on an arrested dated June 20, 1971 on a charge of assault and to which the defendant pleaded guilty and was sentenced to a five month sentence in January of 1972, according to him.

There is an arrest dated November 11, 1971 in San Francisco, California on a charge of shoplifting upon which he was sentenced to a suspended sentence in a local court in San Francisco.

There is one other arrest and acquittal. We have not had the opportunity to make any further checks on his prior record.

[93] THE COURT: Have you met with any members of Mr. Wilson's family? Do you have anything to report about his family background?

MR. LINDEN: Only what he has told us at this time.

THE COURT: Which is?

MR. LINDEN: He tells us that he was born July 10, 1951 in the Brong.

He tells us that his father is Donald and that his mother is Teresa, maiden name is Ryan. Is father is 52 years of age. Resides in the present family home with his mother at 58 McKinley Street in Pearl River, New York, where the family owns their own home and have done so for the past 15 years.

His father, he tells me—he tells me everything that I am reporting—his father is a college graduate who is employed in the business office of a local Lederly Laboratories in Pearl River.

He tells us that he has three—he tells us that his mother is a housewife who also works as a teacher's aid for the Pearl River School System. He tells us that he has three brothers ranging in age 18 to 14, therefore he would be the oldest.

He tells us he is single and that he is childless and that he has been living away from the home since the age [94] of 18.

THE COURT: How old is he now?

MR. LINDEN: He was born in 1951, he is now 21.

THE COURT: Possibly 22, I guess.

MRS. HERMANN: He is still 21, your Honor.

THE COURT: 21.

MR. LINDEN: He tells us that he graduated from Pearl River High School in 1969 and that he very briefly attended the Rockland Community College without receiving any credit for his courses taken.

He tells us that he is in good health; that he has occasionally used marijuana.

He has told us that for the past two and a half years he has not had steady work. He has had odd jobs such as house painting and at one time drove a cab for a number of months.

He at one time claims to have worked—he claims to have worked at one time for five months in 1970 for a construction company in Mount Kisco, New York. He tells us that his vocational plans are in restaurant management. This would be an employment goal of his he tells us.

He tells us he enlisted in the United States Navy on July 15, 1969 and was honorably discharged April 15, 1970 with the rank of seaman, basic seaman E-3.

[95] He volunteered that he was awol a number of times and made a poor adjustment to the Navy.

He tells us he is without assets or formal financial obligations.

THE COURT: Did you question him at all with regard to the crime itself?

MR. LINDEN: Yes.

THE COURT: Do you have anything to report in that regard?

MR. LINDEN: Yes, I do.

Mr. Wilson told us that on the date that this case transpired he had been alone in a local donut shop and he had met someone there who he can only identify by the name of Billy.

He had previously met him at a party.

Billy offered that both he and Wilson could make some money if Wilson went along with him. They got into a car which Wilson was driving, which was owned by a rental agency and another friend of his had rented it, a William Fisher of Spring Valley.

In the car Billy told him that they were going to rob a bank and they proceeded to a bank in Tuxedo on Route 17.

Wilson said they walked into the bank and his friend Billy pulled out a gun. Billy announced that this was [96] a stickup.

Defendant Wilson tied up the man and woman in the bank. Billy took the money and they both left. They got into the car and while they were driving in the Lake Welsch Area they were spotted by police who gave chase.

He said the car hit an abutment, a wall of some kind, and turned over.

Wilson lapsed into a semi-conscious state and ran into the woods where he was found. The money was recovered in the car. He has been in jail ever since.

He also indicated as a result of this accident he broke a finger and had some damage to his arm. He claimed that a policeman who arrested him hit him with a club resulting in a broken arm.

He said he was treated at Nyack Hospital and then taken into Federal custody.

He claimed that whatever admissions he made were made under the influence of morphine which was administered to him at the hospital he believes.

THE COURT: Thank you, Mr. Linden.

Mr. Feinberg, as you know, I took the plea of Mr. Wilson in this case. I have now heard this additional information. Of course I have sat this morning and heard the testimony of the witnesses with regard to this robbery. Is [97] there anything that the Government wishes to add to the situation at this time?

MR. FEINBERG: The Government has nothing to add at this time.

THE COURT: Mrs. Hermann.

MRS. HERMANN: Yes, your Honor.

I feel a little uncomfartable under these circumstances. My normal practice when a defendant of mine is going to be sentenced to spend time working with the probation officer and helping him verify information and giving him additional information in hopes of creating the most favorable possible atmosphere.

THE COURT: Do you know of any information that could be given to me or Mr. Linden that would improve my attitude?

MRS. HERMANN: The most important thing I think is the report from Dr. Wilke. Dr. Wilke is a psychiatrist who examined Mr. Wilson to determine if he were competent to stand trial at your Honor's request.

THE COURT: At my orders.

MRS. HERMANN: What I would have thought might have been helpful would have been further investigation into the breach between defendant and his family, which defendant has told me about and which I will tell the Court about at this [98] point to try to verify that more completely because I think that is the source of all the troubles in the defendant's life.

Mr. Wilson's life.

Mr. Wilson is 21 years of age. He grew up in upstate New York in a highly educated, very strict Catholic family.

His difficulties with his family started in approximately the 7th grade. Up to that point he had attended a parochial high school.

THE COURT: I assume all the information you have comes from Mr. Wilson?

MRS. HERMANN: That's correct, your Honor.

When he went on and left the parochial high school and went into regular high school he started growing his hair longer and this seems to become a symbolic bone of contention between him and his parents.

THE COURT: I thoroughly understand that. I have been through the same thing myself.

MRS. HERMANN: I hope not to the extent—because what happened to Mr. Wilson—

THE COURT: No, I mean I understand that fathers and sons or mothers and sons have strong differences about these things and they can lead to a lot of friction in the [99] family.

MRS. HERMANN: What ultimately happened is that Mr. Wilson—

THE COURT: Mr. Wilson's hair is nearly as long as my son's was.

MRS. HERMANN: Mr. Wilson has told me a story which I would like to tell the Court to illustrate the spirit of the sort of relationship he had with his parents.

A number of years ago when his grandmother died and he and his grandmother were very close, about as close as he was to any of his relatives and his mother refused to let him attend the funeral because of his hair, and this to him is a very symbolic incident in what his childhood was like.

When he graduated from high school, I gather a lot of suggesting and prompting from his father, he enlisted in the Navy. He was honorably discharged under medical conditions because he just absolutely could not adjust to the Navy.

At that point he was basically disowned by his family. That is why he has been on his own since he was 18.

THE COURT: Mrs. Hermann, I am interested in what you are saying. If I were to follow your suggestion that these matters be looked into in greater detail, how would you recom- [100] mend I go about that?

There are two possible courses, it seems to me. One is to send Mr. Wilson back to the doctor for further discussions on this kind of thing and I don't know whether the law, frankly, permits providing a course of psychiatry to prisoners in these situations.

The other would be to impose sentence under 4208C as was done in the case of Mr. Bryan and permit the Government authorities to make an investigation bearing in mind, what you have said.

MRS. HERMANN: Frankly, I was hoping that the Court would follow neither of those two courses.

THE COURT: That is what I want to know. Do you have any other idea?

MRS. HERMANN: And would basically accept Mr. Wilsons representation about his childhood, which Dr. Wilke does discuss.

The reason I am going on about this is because Dr. Wilke's report, which I think is very revealing about the character of the defendant, which is one of the major factors I hope the Court will consider in imposing sentence today, Dr. Wilke really saw this drastic breach between defendant and his family as causing in the defendant a feeling that he was an unworthy and hopeless individual and Dr. Wilke [101] basically perceived Mr. Wilson to be what he stated to be a juncture of crossroads in his life where he might for the past several years Mr. Wilson has sort of been shifting from one thing to another, he gave a try at college, at the time he was arrested he was registered to return to Rockland Community College.

Just from my own personal conversations with him, he is basically a very intelligent person and somebody, you know, has within him the ability to complete college.

Dr. Wilke saw Mr. Wilson at a point in his life where he could either fall into a permanent pattern of criminal behavior and be lost to society, be a menace to society and himself or also might be helped in resolving these problems stemming from his family background by a period of intensive probation and I know that the Southern District of New York—

THE COURT: I don't know he said that. He may have implied it, but I don't know that he said that. Let me intervene—

MRS. HERMANN: Southern District has probably one of the finest departments of probation in the nation. If Mr. Wilson was placed on probation with a sympathetic probation officer and with my help in finding a psychiatrist through Dr. Wilke or through other resources available in the New York area so Mr. Wilson could go into a course of psycho- [102] therapy, I think there is a substantial chance that Mr. Wilson really could be saved.

I have observed a definite change in Mr. Wilson from the time that I first represented him as he has been in

West Street. Then again we are getting into my personal opinion.

Incarceration has had a very negative impact on Mr. Wilson, I fear very greatly, your Honor, that if you send Mr. Wilson away to prison on that you will be writing off one human being for the rest of his life and for the rest of society's life and I feel that this matter of sentence comes before the Court at one of the worse possible contentions.

I cannot believe that the Court is not negatively influenced by the fact that Mr. Wilson has what Dr. Wilke described as an adolescent loyalty to Mr. Anderson—

THE COURT: Why should I be adversely affected by that. I understand perfectly well why he is doing what he is doing.

I am not angry at Mr. Wilson because he refuses to testify. That is up to him.

MRS. HERMANN: I am afraid the Court may take that as a sign of lack of repentence and rehabilitative potential.

THE COURT: I am not sure that wouldn't be fair appraisal, too, but that doesn't mean I am angry or put off [103] by that. I want to cut this short, ladies and gentlemen, I myself have been responsible for its going on this long.

Let me say this: What impresses me above all about what Mrs. Hermann has said is that I do not believe that in this complicated case I have sufficient information before me to permit me justly to proceed to sentence with Mr. Wilson.

I therefore decline to sentence him at this time.

Under those circumstances, I do not believe that he can be required to testify.

I will hear counsel as to whether he believes that the witness can be required to testify before sentence, but I do not think that he can.

MR. FEINBERG: Your Honor, I have two things to say. Just as to your ruling as to the sentence, might your Honor not reconsider the other alternative that he made and since—I have no reason to doubt Mrs. Hermann—sentence the defendant just as Mr. Bryan was

sentenced and get a thorough examination of this defendant.

THE COURT: I don't see any reason why I should just arbitrarily impose that sentence in order to accommodate the Government here particularly where, although I do not believe Mr. Wilson's testimony would be cululative as distinct from the other case that you are pressing, you have two very solid identification witnesses.

[104] MR. FEINBERG: The Government would contend that it is absolutely irregular to the question of testimonial immunity whether or not a particular individual has been sentenced or not before the immunity is granted.

In the very recent case three weeks ago in this Circuit, the matter of Goldberg, Chief Judge Friendly, speaking for a unanimous court, one concurring opinion, excuse me, stated that in a situation where a defendant who had not even been convicted of the crime charged had been granted use immunity, he had to testify.

THE COURT: May I see it?

MR. FEINBERG: I don't have it. I have it, your Honor.

(Pause.)

THE COURT: Are you acquainted with this case?

MRS. HERMANN: Yes, your Honor, and I would be prepared to distingiush it if the Court wanted to hear me.

THE COURT: Tell me now and I will read it having that in mind.

MRS. HERMANN: In Goldberg you had a man who had been—had a complaint filed against him and no further action or proceedings and the criminal charges against him and he was called to testify before the Grand Jury and immunity, use immunity, was given under 18 USC 6002.

[105] He refused to testify on the grounds that with the pending criminal proceeding these things could be used against him.

THE COURT: Isn't that a weaker case than yours?

MRS. HERMANN: I think there the implication of the Court of Appeals was clear that they did not feel that this case, that the criminal case on which the complaint had been filed was in fact going to go forward.

THE COURT: It doesn't have to go forward, if it could go forward.

MRS. HERMANN: Also the threat there was an ephemeral they had. There had been no prosecution, no conviction and therefore no sentence as opposed to this case here where you have a direct and immediate prejudice.

THE COURT: To what?

MR. HERMANN: This gets back into my argument about the prejudice on sentence.

THE COURT: You think I am going to be tougher?

MRS. HERMANN: Yes.

THE COURT: From what I have learned. I have already heard what Mr. Linden had to say.

Let me read this.

(Pause.)

THE COURT: I must say that I am rather persuaded [106] by the Government's position on this case. It seems to give a very broad reading to the statute and even Oaks, who concurs with regret, in the broad reading says with reluctance I feel bound by Kastagar to concur in the majority opinion, neither in legislative history nor practical effect is there any legitimate distinction between a person who has not yet been arrested and one who already has been.

This seems to me to suggest that there is not a distinction although it is not exactly the same, it is certainly analogus, between somebody who has pleaded guilty or who is at a later stage of the process or somebody who has been sentenced and somebody who has not been sentenced.

MR. FEINBERG: Just two very quick points on this. One is as the majority points out, the same thing your Honor pointed out yesterday, we take the risk, if anything is stated by this witness of having to find

an independent source in order to go further on the matter that he testifies about.

The second point just in reply to Mrs. Hermann, this idea that your Honor might be affected by something—by the proceedings, an analogus situation is the Court, the sentencing judge has a variety of matters that might be not properly before the Court.

THE COURT: I have already stated that I am not impressed by that matter.

[107] So we are back where we started except for the fact that I will not proceed with the sentencing of Mr. Wilson. I do ask Mr. Wilson to resume the stand.

MRS. HERMANN: May I just respectfully except. I don't think that Goldman compells that and to the extent that the Court feels Goldberg does, I think Goldberg misread Kastagar and on appeal or certiorari I cannot believe that the holding in Goldberg is going to remain good law.

THE COURT: You may be right. Thre judges of the Court of Appeals may be wrong, but there is a fairly good chance they may be right, too.

Mr. Wilson, will you please take the stand again.

(Mr. Wilson resumes.)

THE COURT: Mr. Linden, I am sorry to have taken your time. We will proceed with the normal pre sentence report in this case.

Would you bear in mind, Mr. Linden, Dr. Wilke's report.

MR. LINDEN: I do not have a copy.

THE COURT: Let me give you a copy. Would you get in touch with Dr. Wilke to the extent you feel it is necessary?

MR. LINDEN: Thank you.

THE COURT: Now, let's try and close this all up.

Mr. Wilson, may I have your attention.

[108] Mr. Wilson, the Government has produced for me its authority to request me to confer on you immunity from prosecution in lieu of asserting your rights under the Fifth Amendment and I do not confer on you immunity against prosecution for anything you may say

while a witness on this stand, except if you lie under oath.

Do you understand what I am saying to you? That means that with regard to any answers which you give to any questions put by Mr. Feinberg while you are on the stand, you may not be prosecuted or anything growing out of that testimony except if you tell—make a false statement under oath.

Mr. Feinberg, you may proceed.

BY MR. FEINBERG:

Q Mr. Wilson, do you know the defendant Robert Joel Anderson?

A I refuse to answer on the grounds that it might incriminate me.

THE COURT: Mr. Wilson, you have no right to refuse to answer on the grounds that it may incriminate you because I have just told you I have conferred immunity on you which means you cannot be incriminated by answering unless you give a false answer.

You can nevertheless refuse to answer if you wish, but if you do, I would have to hold you in contempt of Court [109] and you would be subject to a penalty of imprisonment or of a fine.

Do you understand that?

All right, do you wish to answer the question under those circumstances?

THE WITNESS: I refuse to answer.

THE COURT: I take it you would refuse to answer any question put by Mr. Feinberg with regard to this situation?

THE WITNESS: Exactly.

THE COURT: All right. I don't know that I can take a lot of time for a long sentencing speech.

Any sentence which I impose at the present time with regard to contempt will be a provisional sentence depending upon what the ultimate determination of the legalities of this situation are and any further reports that I get about Mr. Wilson. Is there anything you wanted to add, Mrs. Hermann to what has been said

with regard to what sentence should be imposed on Mr. Wilson with regard to contempt?

Let me first say Mr. Wilson, would you stand, please. Would you look at me?

THE WITNESS: Excuse me.

THE COURT: Would you give me your attention. Look at me. Mr. Wilson, I have to hold you in [110] contempt and I do hold you in contempt of Court for your refusal to answer the questions put to you after you were advised that you had no right to refrain from doing so.

Under the circumstances, I am about to impose sentence and I am asking Mrs. Hermann if she wishes to make any statement in that regard.

MRS. HERMANN: Your Honor, I would rest on legal argument I have made.

THE COURT: I am talking now only about sentence.

MRS. HERMANN: And what I said when I thought you were going to impose sentence before. I would like to say one other thing.

That is given the motivation for what Mr. Wilson has done, I would beg the Court to have mercy in this case and to be as lenient as possible in disposing of this case—

THE COURT: To save a friend.

MRS. HERMANN: Yes.

THE COURT: I think that is better than trying to knife a friend, but I don't think that is something any branch of the Government can forgive.

MRS. HERMANN: I ask your Honor to realize that Mr. Wilson did not intend disrespect to the Court. I now that that is not necessarily an element of contempt, but under all the facts and circumstances of the case of Mr. Wilson, [111] of his background, I beg the Court to be lenient and merciful.

THE COURT: I am going to impose the maximum sentence that I think is appropriate at this time, but I am doing it as I mentioned with regard to Mr. Bryan this morning with full realization that there will be an appeal from my ruling.

I will stay the execution of the sentence until the appeal is determined and I will consider a reduction of

the sentence should the appeal affirm my ruling so that I don't think anybody needs to be worried about the situation at the moment.

What I am doing is to preserve the authority of the Court what it ultimately determines to be best.

Accordingly, Mr. Wilson, I ask you if you have anything you wish to say with regard to what sentence should be imposed on you for your failure to answer the questions which I ordered you to answer?

THE WITNESS: Nothing to say.

THE COURT: All right. I hereby sentence you to the custody of the attorney general or his authorized representative for a period of six months because of your contempt of this Court and your violation of my order and I stay the execution, that means, postpone your having to do that time, until a determination from an appeal of my sentence. You [112] have the right to appeal my sentence and you have a right to appeal my holding you in contempt of court.

Do you understand that?

THE WITNESS: Yes, I do.

THE COURT: If you don't have the funds to file an appeal, I will instruct the Clerk of this Court to file an appeal for you.

Do you have the funds to file an appeal on your own?

THE WITNESS: One thing: Does this mean I remain incarcerated?

THE COURT: You remain just like you were.

MRS. HERMANN: I know what question you are thinking of and I will ask about that.

Do you have money?

THE WITNESS: No, I don't.

THE COURT: Mr. Clerk, will you please file a notice of appeal for Mr. Wilson from my ruling and my conviction and sentence?

THE CLERK: Yes.

MRS. HERMANN: Your Honor, I have two questions. Is the Court reserving decision on whether the six months will be a concurring or consecutive sentence, to any sentence that might be imposed?

[113] THE COURT: I don't know whether I can reserve decision so I will say no, it would be consecutive to any sentence that I would impose for which the defendant has pleaded guilty. Otherwise there would be no point to it. That doesn't mean ultimately the sentence may be more than a week, but whatever it is it will be consecutive.

MRS. HERMANN: I would request that the defendant be allowed bail pending appeal of this case because I believe that there is a substantial issue in this case and I request that the bail conditions currently existing in the bank robbery case be held to apply to the appeal of this case as well and that no additional bail conditions be imposed.

THE COURT: I would impose no further bail. I don't know how that helps, but I would impose no further bail.

Are you asking for further bail?

MR. FEINBERG: No, your Honor, we have no objection to that.

THE COURT: All right.

MRS. HERMANN: Thank you, your Honor.

THE WITNESS: Thank you.

(Witness excused.)

* * * *

EXCERPTS OF TRANSCRIPT OF MARCH 30, 1973

[3]

* * * *

[THE COURT:] Now, I have received today from Mr. Bryan or rather from Mr. Brown, Robert P. Brown, who states that he is the attorney for Mr. Bryan and I have no reason to doubt it, an affidavit outlining his meetings with Mr. Bryan in which he has advised Mr. Bryan with regard to Mr. Bryan's expressed desire not to testify in this case.

I will make the affidavit an exhibit. It states at the end: "I respectfully urge that unless the Government grants Bryan full immunity from the entire crime and all related aspects, which I don't quite understand, any

attempt to compel testimony before his sentencing, which Mr. Bryan contends has not yet occurred because of the fact that Judge Cooper has sentence under Section 4208 C, which leaves open the possibility of a reduction of sentence, would, as Mr. Brown puts it, be violative of Mr. Bryan's constitutional [4] rights, including what Mr. Brown characterizes as 'the right to withdraw his plea of guilty or to appeal from his sentence.'"

I already expressed my view yesterday that the Federal law does not permit Mr. Bryan to withdraw his plea of guilty, does not permit him a right, it permits him always a right to apply to vacate his plea of guilty and certainly does not permit him to appeal his sentence which I understand was imposed after a plea of guilty for which there is no—well, there is no right to appeal a sentence in any event, under Federal law and certainly with regard to a case in which it was imposed after a plea of guilty.

I think we should proceed by calling in Mr. Bryan, by my granting him immunity, by your asking him such questions as you wish and seeing whether he refuses to answer those questions, and if so, my doing whatever is necessary under the circumstances.

The only further question I would like to explore, subject to giving Mrs. Hermann the right to say anything she wishes in behalf of Mr. Bryan, since she is present and he doesn't have counsel physically present, is to ask Mr. Feinberg whether he has satisfied himself of the validity of the immunization authorization which has been put into evidence as Court Exhibit 1.

[5] MR. FEINBERG: Your Honor, I have discussed this matter with our office and also researched the problem and our office will make the statement on the record at this time, that this is absolutely proper.

The teletype communication that we received from Washington was signed by Henry E. Petersen, the Assistant Attorney General of the Criminal Division, and there are cases, specifically United States versus Dimauro, 551F 2nd 428, Eighth Circuit, 1971, which hold that under the old Immunity Statute, but as far as the authorization by Mr. Petersen that that is perfectly proper.

THE COURT: It is proper when it is by the Assistant Attorney General?

MR. FEINBERG: Absolutely.

THE COURT: My understanding had been, and I don't know that it has been changed, that the Attorney General had to specifically authorize it. Am I thinking of wiretaps?

MR. FEINBERG: Your Honor, as to wiretaps, I did bring up United States versus Puntillo in this circuit where that problem was precisely the issue raised and the Court dealt with that there.

THE COURT: I am satisfied to proceed on your representation that you are because you are the loser if you are wrong.

[6] MR. FEINBERG: Thank you.

THE COURT: Mrs. Hermann, do you want to add anything to this ragu?

MRS. HERMANN: Yes, your Honor.

I would first like to suggest that if we reach the point, which I fear we will, where we actually call Mr. Bryan to the stand, that this might be done out of the presence of the jury.

THE COURT: It will be.

MRS. HERMANN: My basic position on behalf of Mr. Bryan and I have spoken to him this morning to ascertain whether there might be a conflict on my speaking in his behalf on this matter.

I have ascertained that there is no conflict between him and Mr. Wilson in this matter.

THE COURT: He wasn't involved in the same case as far as I know.

MRS. HERMANN: —is we shouldn't even reach the issue of whether the grant of immunity is proper or whether his failure to answer under these circumstances would be contempt because a sentence has been imposed under 4208, 4208C mandates a maximum provisional sentence be imposed in order to send a person away for a 90 day study.

It is very rare that a person, in fact, [7] receives the maximum after that 90 day study and I understand that the affidavit from Mr. Brown, Mr. Bryan's attorney,

states that Judge Cooper indicated on the record that it was a technicality mandated by the statute that he impose the maximum in order to send Mr. Bryan away for this 90 day study and under no circumstances did he intend to impose the maximum in this case.

THE COURT: I am prepared to believe that. That is normal procedure. I agree with you.

MRS. HERMANN: It would be my position and I have found no cases directly that support this position that where a person has been convicted, but is before sentence and where he has been convicted on his plea and I think it is recognized that one of the reasons that a defendant will enter a plea of guilty is to keep the details of the crime from influencing the Court at the time of sentence.

Q That may be recognized as a reality, but I don't know that it is recognized as a basis for sustaining a constitutional right to remain silent if called upon.

MRS. HERMANN: My position would be, your Honor, that there is no way the grant of immunity could protect Mr. Bryan from the potential prejudice and impact that his statements under oath should he testify might have upon his sentence before Judge Cooper.

[8] THE COURT: I agree with you. There is no way in which that can be done. There are two counterarguments. One is that Judge Cooper could be equally prejudiced by his refusal to testify.

MRS. HERMANN: That is the other half of my argument.

THE COURT: And secondly he is not entitled to be protected against those risks.

MRS. HERMANN: There are certain facts and perhaps Mr. Bryan should be here when I advance this part of the argument.

THE COURT: I have no objection. Call in Mr. Bryan now.

(Robert Bryan enters the courtroom.)

THE COURT: Will you be seated, Mr. Bryan. I want to tell Mr. Bryan, Mr. Bryan I have had an affidavit from your regular lawyer, Mr. Brown, who has

told me that he talked this situation over with you and he has told me that you don't want to testify and he has told me what his position is on the law.

I asked Mrs. Hermann to come here because Mr. Brown couldn't be here personally.

She is now telling me what she believes to be the law.

MRS. HERMANN: What my argument would be, your Honor, [9] that it is basic and fundamental violation of due process to put a defendant before sentence in the position where Mr. Bryan has been put. If he does not testify and whether or not he is held in contempt, whether or not he is sentenced on that contempt, that indeed is going to put him in a very bad light at sentencing before Judge Cooper.

If he does testify, it could well be that statements he makes in his testimony will put him in an equally bad light before Judge Cooper.

I believe that the facts and circumstances surrounding the Government's use of pressure to try to coerce Mr. Bryan into testifying at this trial and Mr. Bryan has given me some written statements about two approaches that Mr. Feinberg made to Mr. Bryan's mother, indicating—

THE COURT: You consider that improper?

MRS. HERMANN: I consider it improper given the statements that I am told by Mr. Bryan that Mr. Feinberg made to Mr. Bryan's mother concerning the sentence that would be imposed on Mr. Bryan, if he did testify and if he did not testify.

THE COURT: That is something else again, if those statements were made.

MRS. HERMANN: May I read into the record Mr. Bryan's factual contention is on this.

THE COURT: No, I don't see any point to it. If he [10] wants to make them under oath, that is another matter, but otherwise they are pure hearsay, it seems to me.

MR. FEINBERG: Your Honor, may I just make one comment on this matter because Mr. Kahn raised this question of my discussion with Mrs. Bryan also.

The only discussion that I did have with Mrs. Bryan at her insistence, she called my office, was to tell Mrs. Bryan that in the event Mr. Bryan did testify under the grant of immunity, this cooperation would be made known to Judge Cooper and might very well have an effect on Judge Cooper's ultimate sentence of Mr. Bryan.

MRS. HERMANN: Perhaps, your Honor, a hearing is called for on these allegations by the defendant because I think that it is very relevant to the question of whether he can be compelled to testify in this case.

THE COURT: Why? Supposing Mr. Feinberg had said that Mr. Feinberg if he said something, improper, may be disciplined by this Court or the Court of Appeals or his superiors, that doesn't seem to me to have anything to do with the question of whether Mr. Bryan should or should not testify.

I will tell Mr.—I won't tell Mr. Bryan anything. The thing has gone on long enough. It has been discussed to a fair thee well and I am not blaming you because I invited you here by three or four counsel now. There is no certain guide [11] for any of us as to what the law is. It is my responsibility to follow my own best judgment as to what I believe the law ought to be or is in these circumstances.

The worse that will happen if I am wrong is that the Court of Appeals will reverse me and the worse that could happen if I am wrong, it seems to me, for your client is that his plea of guilty would be vacated as some other court's I know have held in some circumstances, which I don't consider to be exactly the same as this, but have some relationship.

I believe that the position taken—that you have taken, Mr. Kahn has taken and Mr. Brown has taken is not correct because it is ultimately falsely assumes or is based on the assumption that Mr. Bryan or somebody in his position is entitled to protection from Judge Cooper's knowing the facts of his case or knowing that he refused to give the facts of his case.

I do not regard the function of a plea of guilty as granting an immunity bath to a defendant against Judges' knowledge of all other facts that he happens to

make available to the Judge at the time of pleading guilty.

A pre sentence report, for example, would be an absurdity if the defendant had an absolute right to keep the Judge from knowing whatever the Judge can find out by any legitimate means.

[12] Therefore, since that is the basis of the argument and I think it is probably the best argument that can be made I decline to follow that theory.

I am going to hold, because I believe it to be the law, that if questions are put to Mr. Bryan, he must answer them.

MRS. HERMANN: May I direct the Court's attention to just one case, your Honor.

THE COURT: Haven't you already?

MRS. HERMANN: I gave that question to the law clerk.

THE COURT: You want to state it for the record?

MRS. HERMANN: Yes, the case of Miles Versus United States at 281 of 2nd 736, Fourth Circuit decision in 1960 where the Court of Appeals held that the Court, the District Court properly refused to compel the answer from a witness because the Court felt that the incriminating statements which might be made by that witness would influence the Court at the time of sentence.

THE COURT: That is one theory and I simply disagree with it. It seems to me that the sentencing Court is entitled to all the information it can get as long as it doesn't get it by duress or illegal means. I don't consider the granting of a defendant immunity duress or illegal means. He is not going to be asked to admit any crimes so far as I know and I should suppose by and large the questions would be directed to [13] the conduct of the defendant in his case rather than Mr. Bryan's own conduct. Obviously he will have to indicate that he was present in certain situations, but I understand the theory that is advanced in that case. I am not sure whether that was a case in which there had been a conviction by trial or a conviction by a plea of guilty, but I don't know that it is terribly relevant on this particular argument.

In any event, in a case like this where the defendant has pleaded guilty and where the sole or nearly the sole argument is that it may be adverse to the sentence imposed on him, if he is required to answer questions because the sentencing Judge may find out something he wouldn't know otherwise, I disagree with that.

If I am wrong the Court of Appeals will correct my error.

MR. FEINBERG: Your Honor, I ask that the defendant take the oath.

THE COURT: He already has been sworn.

Let the record indicate that Mrs. Hermann is personally conferring with Mr. Bryan at the present time.

(Robert Bryan resumes.)

THE COURT: You can remain present to advise the witness how to answer questions if you wish.

MR. FEINBERG: Should the defendant be reminded he [14] is under oath?

THE COURT: Mr. Bryan, I remind you that yesterday you were sworn to tell the truth in this case and you are still under oath.

THE WITNESS: Yes, sir.

THE COURT: All right, Mr. Feinberg.

DIRECT EXAMINE

BY MR. FEINBERG:

Q Do you know the defendant Robert Anderson?

MR. FEINBERG: The immunity doesn't even attach yet.

THE COURT: Mr. Bryan, you must either answer that question or state that you refuse to answer the question.

A I refuse to answer the question.

THE COURT: On what grounds?

THE WITNESS: On the grounds that it may tend to incriminate me.

MR. FEINBERG: Can I ask him one more question.

THE COURT: Yes.

Q Mr. Bryan, on October 10, 1972, did you along with the defendant Robert Anderson commit a bank robbery in the Nanuet National Bank, Mount Ivy, New York?

A I refuse to answer the question on the ground they might tend to incriminate me.

MR. FEINBERG: I would ask the Court to instruct the [15] witness that he has to answer the question posed.

THE COURT: Mr. Bryan, I do instruct you that you must answer those questions. As I understand it you have pleaded guilty to that very bank robbery and therefore I fail to understand how you are admitting that you did commit the bank robbery at this time can incriminate you?

THE WITNESS: Your Honor—

THE COURT: Say what you wish.

THE WITNESS: I have pleaded to an assault with a weapon. I have not pleaded to a bank robbery.

THE COURT: Is that so?

THE DEFENDANT: That is so.

THE COURT: If that is so I would agree with you.

MRS. HERMANN: I have no personal knowledge of that.

MR. KAHN: That is so. I refer your Honor to the affidavit of Mr. Brown.

THE COURT: You are correct, Mr. Bryan, and I sustain your refusal to answer the last question. At least let me state that Judge Cooper's sentence indicates, filed March 20, that Mr. Bryan pleaded guilty to knowingly and wilfully and unlawfully assaulting persons and putting in jeopardy the lives of persons by the use of dangerous weapons and devices, et cetera.

[16] Q Mr. Bryan, on October 10 did you enter the Nanuet National Bank with the defendant Robert Anderson?

MR. KAHN: May I make an objection at this point with your permission?

THE COURT: You can always object to a question.

MR. KAHN: May I as an officer of the Court, call something most respectfully to your attention?

I think once he has uttered his constitutional rights, counsel does not have the right to proceed.

THE COURT: You mean he couldn't ask him his mother's name now. Don't be silly. Sit down, Mr. Kahn.

Q Mr. Bryan, on October 10, 1972, did you enter the Nanuet National Bank with Mr. Anderson?

A I refuse to answer the questions on the grounds that they might tend to incriminate me.

MR. FEINBERG: Your Honor, I would ask that the Court hold Mr. Bryan in contempt and that he be immediately sentenced under 18 US Code 401.

THE COURT: I decline to do so, Mr. Feinberg. The Government has not immunized Mr. Bryan at this time and some of these questions may overlap into crimes other than the one to which he pleaded guilty.

MR. FEINBERG: If any of these questions overlap, Mr. Bryan is receiving full immunity as to anything he might [17] answer here in this courtroom.

THE COURT: What did he receive immunity?

MR. FEINBERG: I have asked that the Court instruct Mr. Bryan that anything he receives under this notification from Washington—

THE COURT: That hasn't come up yet in the proceedings this morning that I know of. You have only told me that I am authorized to grant immunity and you haven't requested me to do so yet.

MR. FEINBERG: I am sorry, your Honor.

THE COURT: He is only pleading the Fifth Amendment.

MR. FEINBERG: At this time I would ask the Court to instruct Mr. Bryan as to that.

THE COURT: I will instruct him.

Mr. Bryan.

THE WITNESS: Yes, sir.

THE COURT: There is a possibility that you are entitled to refuse to answer these questions under the Fifth Amendment as you just indicated because they might tend to incriminate you.

The Assistant Attorney General has authorized the United States Attorney's Office and me to grant you immunity from prosecution—pursuant to 18 United States Code, Section 6003 in this case, and any further pro-

ceedings resulting from [18] this case or ancilliary to this case.

I therefore am advising you that I am hereby conferring on you immunity from prosecution, as I indicated.

Which means that your refusal to answer on a claim that your answer would tend to incriminate you is no longer valid, but you will not be prosecuted for anything that you answer here in Court unless you lie under oath.

Now, under those circumstances I will ask Mr. Feinberg to put his questions to you again and I instruct you in advance that if they are the same questions, I will then order that you must answer those questions because you cannot be prosecuted for anything growing out of your answers and if you refuse to answer then, I would be forced to hold you in contempt of Court, which means to impose either a jail sentence or a fine.

Do you understand what I have said?

A Yes, your Honor.

THE COURT: All right.

BY MR. FEINBERG:

Q Mr. Bryan, do you know the defendant Robert Joel Anderson?

A I refuse to answer the question on the ground that it might tend to incriminate me.

THE COURT: Mr. Bryan, I am directing you to answer [19] that question because it can no longer tend to incriminate you since I have conferred upon you immunity from prosecution.

THE WITNESS: Your Honor, the question in point, I did not ask for this immunity.

THE COURT: You did not ask what?

THE WITNESS: I was not asked for this immunity.

THE COURT: I know, Mr. Bryan, but it isn't necessary for you to ask. The Government has the right to ask me to confer it on you whether you want it or not. I am telling you as the person responsible to tell you what the law is and even Mrs. Hermann will agree with me on this one that you have no right to refuse immunity.

Therefore, I am instructing you that you must answer the question or I will hold you in contempt of Court.

Do you continue to refuse to answer the question?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Mr. Bryan, I shall proceed upon due reflection to impose a penalty upon you for your failure to obey the instructions of the Court. At the moment, I am merely ruling that you are in contempt of Court.

I will impose sentence shortly. I ask you to return to the witness room. I would like to confer with counsel where we go from here.

[20] THE WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: Mr. Feinberg, are you going to attempt to proceed further in this case—let me ask you this.

My suggestion is that I impose a sentence of a specific period of time, a lawful period of time subject to the elimination of that sentence or reduction of it to nothing should Mr. Bryan care to testify and answer the questions which you have put.

It may become academic in a case like this because I assume you have to move in along in this case.

MR. FEINBERG: At the conclusion of this matter with Mr. Bryan, we go on to the other bank robbery.

MRS. HERMANN: Will the Court hear from counsel on the subject of sentence.

THE COURT: Sure, mustn't I?

MRS. HERMANN: I am not sure in a contempt case, your Honor.

THE COURT: It is a good practice.

(Robert Bryan enters the courtroom.)

MRS. HERMANN: Your Honor, on the question of sentence which may be imposed or will be imposed by this Court on contempt under 18 U.S.C. 401, the sentence of contempt does not only—can be for a period up to six months unless there is [21] to be a trial by

jury. It can be a fine. It can also be probation, your Honor.

Iwould respectfully urge the Court that Mr. Bryan—the only words that come to my mind means no contempt in a non-legal sense.

THE COURT: I don't consider him to have a chip on his shoulder towards the Court or towards me.

MRS. HERMANN: I find the whole conduct of the Government towards this witness troublesome and I would ask the Court to take that into consideration:

That there is no question but that Mr. Bryan has been really whip-sawed here with no very good alternatives open to him at all. I think that he—

THE COURT: That is an assumption there should be alternatives open in a situation of this kind.

MRS. HERMANN: I would urge the Court particular in view of the fact that a 90 day study has been imposed so that Judge Cooper may make a rational and humane decision about the ultimate sentence in this case to impose a term of no more that 90 days for the contempt and to run it concurrent with the time during which the 90 study will be conducted.

THE COURT: I wouldn't do that. I will tell you what I am going to do: I am going to impose the maximum sentence here, very much like Judge Cooper did, with the deliberate [22] intention of revising that sentence to what might be appropriate in the light of the very study that is going to be made. After all, we are talking to some extent in academics at the moment.

Mr. Brown, is in custody. He is going to be in custody for a while and I want to preserve the Court's power to do what seems sensible in the light of the study.

Therefore—

MR. FEINBERG: Your Honor, may I say one thing. Your Honor, I am not asking that Mr. Bryan be sentenced to a six month maximum under 18402. I am asking that Mr. Bryan be sentenced at your discretion under 18-401 which provides no maximum sentence whatsoever.

THE COURT: I am reluctant to impose a sentence of more than six months when I am acting on my own.

MR. FEINBERG: For your consideration, might your Honor consider imposing a sentence consecutive to whatever Judge Cooper ultimately sentences the defendant to?

THE COURT: I would because if I am going to impose any sentence that has any reality, I want it to be consecutive with Judge Cooper's sentence and not concurrent.

Mr. Bryan, you have a right to say anything you wish at this time as to what sentence I should impose on you with regard to your contempt of Court. Is there anything you wish [23] to tell me?

THE DEFENDANT: Really no, your Honor.

THE COURT: Mr. Bryan, will you please stand. I have heretofore held you in contempt of Court for violation of the statutes to which we have referred this morning and I impose on you at this time a sentence of six months, you are to be committed to the custody of the Attorney General or his authorized representative for a period of six months to commence subsequent to whatever term shall be served under the sentence of any amendment of sentence with regard to your plea of guilty in 72 Cr. 1190, the case in which you pleaded guilty before Judge Cooper.

That is the sentence.

I wish to add that after this study is concluded or should you appeal my holding you in contempt and my sentence and I think it would be proper for you to appeal it, so that the question raised here can be settled, I will, of course, consider any application for reduction of sentence.

MRS. HERMANN: Just to clarify that. Your Honor is not sentencing under 4208 C then?

THE COURT: No, I am not. I am imposing an absolute sentence but I retain jurisdiction to reduce the sentence to nothing or up to four months from now or if there is an appeal from up to four months after the final disposition of any appeal.

[23a] I will stay execution of the sentence in the meantime.

MRS. HERMANN: Thank you, your Honor.

MR. FEINBERG: Thank you, your Honor.

(Robert Bryan left the courtroom.)

* * * *

SUPREME COURT OF THE UNITED STATES

No. 73-1162

UNITED STATES, PETITIONER,

v.

THOMAS JOSEPH WILSON and BOBBY ANTONIO BRYAN

ORDER ALLOWING CERTIORARI—Filed May 13, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 551013 283